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GUIDANCE TO THE SUSTAINABLE APPAREL COALITION

ENVIRONMENTAL CLAIMS IN MARKETING TOWARDS CONSUMERS BASED ON THE HIGG MSI

1 INTRODUCTION

1.1 Background

This guidance document is issued by the Norwegian Consumer Authority (the **NCA**), in collaboration with the Netherlands Authority for Consumers and Markets (the **ACM**), to the Sustainable Apparel Coalition (the **SAC**). The guidance concerns traders' use of environmental product claims in marketing towards consumers, based on the Higg Materials Sustainability Index (**Higg MSI**) owned by the SAC.

The guidance is issued based on previous correspondence and meetings between the NCA and the SAC, as well as a meeting held between the ACM and the SAC.

The NCA and the ACM are hereafter collectively referred to as the **Authorities**.

1.2 Purpose of this guidance

The Authorities agree with the SAC that it is positive that the textile industry wishes to display credible data to the consumers about the materials used in garments. However, when information is presented to consumers, it is important that this information is correct, substantiated, and not presented in a misleading manner.

The Authorities have identified aspects of environmental claims made by traders based on the Higg MSI that need to be brought in line with the relevant rules in order to mitigate the risk of such claims being misleading and prohibited in the EU/EEA area.

In this guidance document you will find more specific information about the following:

1. Requirements for the *documentation for, and substantiation of*, claims using the Higg MSI (see section 4)
2. Requirements relating to the *claims that can be made* using the Higg MSI (see section 5)
3. Recommendations relating to the *presentation* of claims using the Higg MSI (see section 6)

The Authorities underline that the assessment of whether marketing towards consumers is misleading under the Unfair Commercial Practices Directive (UCPD) and corresponding national laws, must be based on a case-by-case assessment of the relevant marketing. Individual variations in marketing may thus result in different assessments.

This guidance document is only meant to help mitigate the risk of misleading marketing practices. The guidance concerns how the SAC can use the Higg MSI in marketing adhering to the principles in the UCPD and the Commission Notice on the interpretation and application of the Unfair Commercial Practices Directive (the **UCPD Guidance**) in order to limit the risk of misleading consumers. However, even though a trader complies with the principles in this document, a marketing measure *can* still be considered misleading. Unlike the UCPD, this document does not constitute a legal framework for making environmental claims. The SAC should always seek legal advice should anything in this guidance document be unclear, or if changes occur in marketing measures based on the Higg MSI or in applicable law.

A summary of highly relevant articles of the UCPD and statements in the UCPD Guidance is included in Annex 1.

This guidance is limited to the use of the Higg MSI in marketing measures and the presentation of the Higg MSI data towards consumers.

2 ABOUT THE SAC AND THE HIGG MSI

The SAC is a global, multi-stakeholder non-profit alliance for the apparel and footwear industries. It is made up of over 250 leading apparel, footwear and textile brands, retailers, suppliers, service providers, trade associations, non-profits, NGOs, and academic institutions working to reduce environmental impact and promote social justice throughout the global value chain.

The SAC has developed the Higg Index, a set of tools that standardize the value chain for all industry participants. This tool measures the environmental and social impact of products across the value chain. With this data, SAC intends to help the industry to identify hotspots, to continuously improve sustainability performance, and achieve the environmental and social transparency consumers are demanding.

The Higg MSI measures the environmental impact of materials used in garments. The Higg MSI has been developed by the industry, represented by the SAC. The SAC allows traders to use the Higg MSI data to present information to consumers about environmental impacts of materials used in textiles.

The SAC does not allow the use of Higg MSI to compare different material types that have different functional uses or entirely different environmental impacts. The SAC only allows traders to compare “preferred materials” to their “conventional benchmark”. This means that a process is compared to the equivalent process (functionally and aesthetically) that would have been used if the manufacturer had not decided to use a specific material or design (e.g., conventional cotton fibre or virgin polyester would have been used if organic cotton or recycled polyester had not been chosen).

The index communicates the environmental performance of the “preferred” material from the manufacturing or growing of raw materials up to the moment when the material is ready for use in the final product (“cradle to gate”), compared to the environmental impact of the “conventional benchmark” material.

A presentation of four impact categories for the materials, cradle to gate, constitute the index: The materials’ impact on “Global Warming”, “Fossil Fuels”, “Water Use” and “Water Pollution”. These categories are used as part of the index to make it easier for consumers

and businesses to compare the environmental impact of one material to the conventional version of the same material.

The Higg MSI numbers are based on global average data and thus global average numbers. This means the numbers shown through the Higg MSI are not specific to the production of the individual product the claim of reduced environmental impact is made in relation to.

If a garment consists of several types of materials, the SAC does not allow single material claims. If a garment consists of several types of materials, the index calculates the environmental impacts of the full garment's material composition and communicate these numbers to the consumer through the scorecard of the index (each fibre type in the garment being compared to its conventional benchmark).

3 THE FINDINGS OF THE NCA CONSTITUTING THE BASIS OF THIS GUIDANCE

The NCA has investigated a Norwegian trader's use of the Higg MSI in marketing towards consumers, and the underlying data sets for the Higg MSI for the comparison of organic cotton to conventional cotton. The NCA found that the trader's use of Higg MSI data in marketing towards consumers was misleading, and that the use of Higg MSI data in marketing towards consumers in general could easily be misleading.

The NCA found the documentation for, and substantiation of, the environmental claims insufficient. The claims were also presented in a way the average consumer would not understand. The findings of the NCA include:

- a) **The global average data did not constitute documentation for a product specific claim.** The documentation underlying the Higg MSI represents the global average environmental impact of the production of a "preferred" material to the production of a "conventional benchmark" material. Global average data is by nature not specific to the production of a particular product. *Because consumers would likely get the impression that the numbers were an accurate description of specific products*, the NCA found that the presentation of the Higg MSI data were misleading.
- b) **Documentation for claims made was outdated.** Data sets underpinning the investigated claims (organic cotton vs. conventional cotton) were outdated. This means the validity of the relevant data sets, and therefore the claims communicated through the Higg MSI, had expired. The SAC did not provide documentation to prove that the data sets were still scientifically relevant and fit for use. When the Higg MSI builds on outdated data sets, the index and the claims made through the index cannot be regarded as sufficiently documented.
- c) **Documentation included data not meant for comparison as done by the Higg MSI.** Data sets underpinning the investigated claims were not meant to be used to make comparative assertions such as the Higg MSI does. The 2014 '*Life Cycle Assessment (LCA) of Organic Cotton – A global average*' and the 2012 '*LCA update of cotton fiber and fabric life cycle inventory*' are not meant to be used to make comparative assertions. The 2014 '*Life Cycle Assessment (LCA) of Organic Cotton – A global average*' is referring to the 2012 '*LCA update of cotton fiber and fabric life cycle inventory*' for discussion purposes only: *"This study does also not intend to conduct a comparative assertion as defined in the relevant ISO standards (ISO 14040, ISO 14044). Available published data is used to set the results of the presented study into perspective, for discussion and interpretation.*" On page 54 and 55 the report stress this point again: *"It should be stressed again, that an ISO consistent comparison of two product systems would require additional effort in*

assessment of the precision, completeness and representativeness of data used; description of the equivalence of the systems being compared, uncertainty and sensitivity analyses and evaluation of the significance of the differences found.” And in the report’s conclusion on page 57: “Life Cycle Assessment is a powerful standardized tool for quantitative evaluation of potential environmental impacts on product basis; however, given the social and socio-economic dimensions of sustainability, further aspects than those investigated in this study need to be considered for a holistic assessment of sustainability of a production system or a comparison with another production system.”

Part of the data underlying the Higg MSI are these two reports, and the Higg MSI compares organic cotton to conventional cotton. The SAC did not provide documentation to prove that the data sets would be scientifically acceptable to compare and use in the way done through the Higg MSI. When the Higg MSI compares data sets not meant for comparisons, the index and the claims made through the index on cotton cannot be regarded as sufficiently documented.

- d) **Information on other relevant impact categories other than those four in the cradle to gate phase presented to the consumer, were not accounted for.** The Higg MSI consists of four impact categories. However, other relevant impact categories were not accounted for in the presentation of the Higg MSI data. If relevant impact categories are omitted, it is difficult to assess the actual environmental benefits of the impact categories already included in the Higg MSI. Considering that the Higg MSI excluded information about other relevant impact categories, the NCA found that the reduction in environmental impact did not correspond to what was marketed.

In the aftermath of the NCA’s conclusion, the SAC has confirmed that it has temporarily suspended the traders’ possibility to use Higg MSI data in marketing towards consumers. The SAC has also confirmed that it will conduct a third-party review of the Higg MSI data and methodology.

4 REQUIREMENTS FOR THE DOCUMENTATION FOR, AND SUBSTANTIATION OF, HIGG MSI CLAIMS

4.1 How can the SAC meet the Authorities’ concerns regarding substantiation of and documentation for claims?

4.1.1 Third party review of the underlying documentation should be carried out and documented

What constitutes sufficient documentation for a claim, will depend on the specific content of the claim made. The complexity of the product or activity will be relevant in this respect.¹

Claims made based on the Higg MSI are seemingly based on complex methodology and data, and the relevance of the data sets for comparisons are unclear. To ensure the validity of the claim, the SAC should engage an independent third party to review the collective data sets underlying the Higg MSI and the Higg MSI methodology. Such review should assess and confirm the scientific validity of the Higg MSI methodology and data underpinning the Higg MSI, and this assessment should be documented.

¹ Cf. the UCPD Guidance document 4.1.1.5

If data sets are seemingly outdated, their continued relevance as basis for the claim made should also be assessed by a third-party expert. The assessment should be scientifically valid and documented. This also means periodic review of the Higg MSI data set will be necessary. If data sets are seemingly not meant for comparisons, the scientific validity of using the data sets for comparisons as a basis for claims made should be assessed by a third-party expert, and this assessment should be scientifically valid and documented.

If there is *significant disagreement* in the scientific community with respect to the methodology, correctness and/or relevance of specific Higg MSI data sets, the relevant data sets should not be used for making environmental claims towards consumers through the Higg MSI (or otherwise).²

4.1.2 *The use of global average numbers – underlying data should be representative, meaning likely significant variations should be represented in the underlying data*

The global average numbers presented to the consumer should be based on *representative data*. This means that if there are significant variations from country to country or region to region in the numbers presented to the consumer, this should be reflected *in the data* constituting the basis for the global average numbers. For example, if it is likely from a scientific point of view that water usage for organic cotton and/ or conventional cotton varies from country to country and / or region to region, the data underlying the averages should reflect this. If not, the data underlying the numbers will not be representative. Presentation of these numbers to consumers may then be misleading.

5 REQUIREMENTS RELATING TO THE CLAIMS THAT CAN BE MADE BY USING THE HIGG MSI

5.1 How can the SAC meet the Authorities' concerns regarding the claims?

5.1.1 *Make sure the claim is put into context – relevant environmental impact categories should not be omitted in the presentation of the environmental impacts measured*

The SAC has stressed that the Higg MSI only presents environmental impact categories to the consumer that have sufficient scientific proof to be **relevant and measurable**.

The Authorities recognize that the environmental impacts in the total life cycle of a textile are complex and agree that it is not *automatically* misleading to present only the impact categories that are scientifically certain and measurable at the time of the marketing measure. However, whether presenting *only certain and measurable categories* is misleading, will depend on *how* the claim of reduction on environmental impact is *presented* to consumer:

- a) **The marketing must clearly inform consumers that the data only concerns the specific impact categories, and that there are other (maybe more) important categories for the specific product not included in what is presented.**

If existing or new scientifically recognized research introduce new impact categories of the material's cradle to gate environmental impacts, such impacts should be highlighted to the consumer, whether the relevant impact is measurable or not.

If, based on scientifically recognized research, it is likely that relevant impact categories are omitted in the presentation of the Higg MSI data, this may give

² Cf. the UCPD Guidance document 4.1.1.5

consumers a misleading impression of the products' potential environmental impact. Relevant impact categories may vary depending on the materials in question. It is important that consumers are informed about these other relevant impact categories, and why these are not measured.

The Authorities expect that the Higg MSI is at all times updated in this regard.

- b) **It should be clear from the marketing that the numbers only show relative environmental impact (a material vs. conventional material), cradle to gate and does not say anything about the total environmental impact of the product in a life cycle perspective (cradle to cradle).**

For the consumer to understand the context of the environmental impact numbers presented, and what is not included in the numbers presented:

- The SAC needs to make clear what cradle to gate means to consumers, as this will not be self-explanatory to the average consumer.
- The SAC should clearly inform the consumer of which possible environmental impacts - in the life cycle of a product - are not reflected in the numbers presented. This applies irrespective of whether these excluded, possible impacts are on the cradle to gate stage (see 3.2.1 a) above) or later.

Possible environmental impacts that are not included in the life cycle perspective should be listed in the display in the index itself (whether measurable or not) or otherwise made clear to the consumer (e.g., impact of transportation, variations in durability and repairability, the item being used and washed, handling of the item when discarded etc.).

This means that if there is reason to suspect, based on available, scientifically recognized research, that certain environmental impact categories or impact stages are *relevant* in a garment's life cycle, even though they are not measurable, the SAC should find a way to communicate this to the consumer in a clear manner.

5.1.2 *Make sure the meaning of the claim is made clear to the consumer*

- c) The names of the four impact categories used as of today are vague, for example "Global warming". In the opinion of the Authorities, it is not sufficiently clear to consumers what this means. The meaning of the categories must be made clear to consumers.
- d) It should be clear that the numbers measured and presented are global averages, and that their basis is not the production of that specific product.
- e) It should be clear what constitutes the basis of comparison in the numbers displayed to the consumer. If a "preferred" material is compared to a "benchmark conventional" material, this should be made clear. If not, the consumer may understand the reductions in environmental impact presented for example to be a comparison between the relevant material and all other available materials in the market, which would be misleading.
- f) If a product consists of different materials, and a claim were to be made on only part of the materials in the product, this could easily be misleading. Not including all materials in the product in the data presented, may mean that main environmental impacts are not taken into account. Irrespective of the fact that the material should

represent a significant portion of the product's composition (e.g., at least 50%), it doesn't necessarily mean that the environmental benefit is significant, considering the total impact of all the materials used in the product.

6 RECOMMENDATIONS FOR PRESENTATION OF THE CLAIMS AND HIGG MSI CLAIMS TOWARDS CONSUMERS

The Authorities recognize the complexity of providing the information in sections 4.2.1 – 4.2.2 above, not just accurately, but in a concise and understandable way to consumers.

Nevertheless, the need for comprehensive explanations stems from natural limitations in the documentation for environmental claims made by use of the Higg MSI. The Higg MSI is built on a cradle to gate assessment, only certain impact categories are measured, and the numbers are global averages. Thus, the above information should be appropriately communicated to consumers to alleviate the issues related to the documentation and basis of the claims made.

The following is paramount in the presentation of environmental claims in marketing towards consumers based on the Higg MSI:

- All the information above should be presented in a clear and unambiguous way in order to avoid misleading claims.
- **The Authorities do not recommend the SAC to adopt the measures concerning information to consumers (see section 3) in plain text only.** This could quickly overload the consumer with information and contradict the aim of putting the information into context. For this reason, the Authorities recommend that the SAC designs a way of displaying Higg MSI based claims / marketing in such a way that much of the necessary information can be understood by the consumer from the presentation itself, rather than from extensive explanations and waivers. This can be done for example by implementing communicative elements in design choices, graphical illustrations or interactive figures.

If Higg MSI data sets is at any point updated and developed so that numbers presented have a direct traceability to a specific product, the requirements for the presentation of a claim may be reduced accordingly.

Annex 1

RELEVANT EU/EEA LAW

To address the specific use of the Higg MSI in its right legal context, we have given an overview of the relevant EU/EEA law governing the use of environmental claims in marketing towards consumers within the EU/EEA area.

The UCPD is harmonized across the EU/EEA member states and concerns the unfair business-to-consumer commercial practices in the internal market. Whether an environmental claim is misleading must be assessed in light of the UCPD's prohibition against misleading marketing practices, cf. Articles 6 and 7. According to Article 12 of the Directive, a trader must be able to substantiate their claims with sufficient evidence, and to present the documentation to the relevant authorities upon their request.

Relevant UCPD articles when it comes to presentation of claims are:

“Article 5 Prohibition of unfair commercial practices

1. *Unfair commercial practices shall be prohibited.*
2. *A commercial practice shall be unfair if:*
 - (a) *it is contrary to the requirements of professional diligence,*

and

 - (b) *it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.*
3. *Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.*
4. *In particular, commercial practices shall be unfair which:*
 - (a) *are misleading as set out in Articles 6 and 7,*
 - or*
 - (b) *are aggressive as set out in Articles 8 and 9.*

(...)”

“Article 6 Misleading actions

1. *A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:*

(...)

(b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results “and material features of tests or checks carried out on the product;

(...)”

“Article 7 Misleading omissions

- 1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.*
- 2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.*
- 3. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.”*

Relevant guidelines from the UCPD Guidance

On 17 December 2021, the European Commission adopted a new Commission Notice on the interpretation and application of the Unfair Commercial Practices Directive (the **UCPD Guidance**). This document contains important principles for the understanding and interpretation of the articles in the UCPD. Our guidance to the SAC is therefore based on the guidelines laid down in the UCPD Guidance document.

The following guidelines from the UCPD Guidance document are crucial to the SAC and traders using the Higg MSI in marketing towards consumers to follow when it comes to presentation of claims:

- a) From the UCPD Guidance document 4.1.1.3:
 - *“When assessing an environmental claim, the product’s main environmental impacts over its lifecycle, including its supply chain, are relevant. An environmental claim should relate to aspects that are **significant in terms of the product’s environmental impact.**”*
 - *“An environmental claim should in any case relate to aspects that are significant in terms of the product’s total environmental impacts over its life cycle. Highly polluting industries may be required by courts or authorities to make it clear to the consumer in their environmental claims that the product has an overall negative impact on the environment.”*

- “[C]laims should be clear and unambiguous regarding which aspect of the product or its life cycle they refer to. If a trader makes an environmental claim **by highlighting just one of several impacts the product has on the environment, the claim could be misleading** within the meaning of Article 6 or 7 of the UCPD.”

b) From the UCPD Guidance document 4.1.1.4:

- **“When making an environmental claim, the product’s main environmental impacts are relevant.** Furthermore, an environmental claim concerning a product must relate to an actual environmental impact of that specific product and should be distinguished from more general environmental claims regarding the trader, its practices and sustainability policies.”

Relevant UCPD articles when it comes to documentation for, and substantiation of, claims are:

«Article 12 Courts and administrative authorities: substantiation of claims

Member States shall confer upon the courts or administrative authorities powers enabling them in the civil or administrative proceedings provided for in Article 11:

(a) to require the trader to furnish evidence as to the accuracy of factual claims in relation to a commercial practice if, taking into account the legitimate interest of the trader and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case;

and

(b) to consider factual claims as inaccurate if the evidence demanded in accordance with (a) is not furnished or is deemed insufficient by the court or administrative authority.

(...)»

Relevant guidelines from the UCPD Guidance

The following guidelines from the UCPD Guidance document are crucial to the SAC and traders using the Higg MSI in marketing towards consumers to follow when it comes to documentation for, and substantiation of, claims:

a) From the UCPD guidelines section 4.1.1.5:

*“Article 12 of the UCPD clarifies that any claim (including environmental claims) should be based on evidence which can be verified by the relevant competent authorities. Traders must be able to substantiate environmental claims with appropriate evidence. Consequently, **claims should be based on robust, independent, verifiable and generally recognised evidence which takes into account updated scientific findings and methods.**” (our highlighting)*

- *“The burden of proof regarding the accuracy of the claim rests on the trader.”*
- *“[The trader] should make sure that documentation for claims is up to date for as long as the claims remain in use in marketing.”*

- *“The presented evidence should be clear and robust. Independent third-party testing should be made available for the competent bodies if the claim is challenged.*

If expert studies give rise to significant disagreement or doubt over environmental impacts, the trader should refrain from the claim altogether. *The content and scope of the documentation to be supplied will depend on the specific content of the statement. The complexity of the product or activity will be of relevance in this respect.”* (our highlighting)

b) From the UCPD guidelines section 4.1.1.3.:

- ***“Claims should be reassessed and updated as necessary,*** *in view of technological developments, and the emergence of comparable products or other circumstances that may affect the accuracy or relevance of the claim. Environmental claims should not relate to an improvement compared to a product from the same trader or a competitor that is no longer available on the market or the trader no longer sells to consumers, unless this improvement is significant and recent.”* (our highlighting)